

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

CHRISTENSEN FARMS MIDWEST, LLC,)	
)	Case No. _____
Plaintiff,)	
)	
v.)	
)	
THOMAS J. MILLER, in his official)	COMPLAINT FOR
Capacity as Attorney General of the)	DECLARATORY AND
State of Iowa,)	PROSPECTIVE INJUNCTIVE
)	RELIEF PURSUANT TO 42 U.S.C.
Defendant.)	§ 1983
)	
)	

Plaintiff Christensen Farms Midwest, LLC (hereinafter "CF"), states the following as its Complaint for Declaratory and Prospective Injunctive Relief Pursuant to 42 U.S.C. § 1983 against defendant Thomas J. Miller, Attorney General of the State of Iowa, in his official capacity:

NATURE OF THE LAWSUIT

1. This suit is brought by CF for a declaration that Iowa Code Chapter 202B on its face, in its purpose, and in its effect violates the dormant Commerce Clause, Article I, Section 8, Clause 3, of the Constitution of the United States. CF seeks permanent, prospective injunctive relief to prevent the enforcement of Iowa Code Chapter 202B.

THE PARTIES AND THEIR INTERESTS

2. CF is a Minnesota limited liability company with its principal place of business in Minnesota. CF owns and operates hog production facilities across the State of Iowa and, with the other affiliated Christensen family business entities maintain substantial swine operations in the states of Iowa, Minnesota, Illinois, Nebraska, and South Dakota, and Colorado.

3. CF is a Family Farm Limited Liability Company as that term is defined under both Iowa and Minnesota law.

4. Iowa Code Chapter 202B prohibits a "processor" from either "directly" or "indirectly" engaging in certain activities including, but not limited to, owning, operating, financing or controlling a swine operation within the state of Iowa or contracting with Iowa producers for the care and feeding of swine in Iowa.

5. With certain exceptions, CF may not acquire an interest in a processor; to do so would cause CF to be deemed a processor. CF would therefore be ineligible to own and/or operate its swine operations in Iowa.

6. The exception to the rule that a processor may not own/operate swine operations is where a swine producer owns a "Threshold Interest" in a "Qualified Processor."

7. A Qualified Processor is a processor in which the majority of ownership is held by swine producers but no individual swine producer owns in excess of a Threshold Interest in the processor. A Threshold Interest is generally understood to be a 10% interest or less in the Processor.

8. In order to address the issue of obsolescence of facilities in the swine processing community; in order to make the market place more competitive; to respond to consumer demand; and to cause their individual swine operations to remain economically viable, a number of swine producers joined together in 2005 to own, construct and operate a state of the art pork processing facility.

9. Known as Triumph Foods, this producer organization has enhanced competitiveness in the swine industry; it has bolstered U.S. ability to export pork products; it has had a material participation in improvements to product quality and diversity of product

offerings to consumers; and it has enabled its swine producer members to remain economically viable through adverse economic conditions.

10. In addressing Iowa Code Chapter 202B, members of the Christensen family – on an individual basis through separate Limited Liability Companies – contributed to and took ownership in Triumph Foods. Each family member acquired not more than a Threshold Interest in Triumph Foods. Therefore, Triumph Foods was and is eligible to be a Qualified Processor under Iowa law – and as a result, its swine producer members may be owners of both their swine operations and of Triumph Foods.

11. CF itself was unable to own the interest in Triumph insofar as the total of all “Threshold Interests” acquired individually by members of the Christensen family exceeds 10%.

12. Accordingly, as broadly defined in Iowa Code Chapter 202B, the Attorney General of the State of Iowa has taken the position that CF, if it acquired an interest in Triumph equal to the total of the Threshold Interests held individually by all family members, would be a “processor.” CF would as a result, be prohibited from owning its swine operations in the state of Iowa.

13. As a result, Iowa Code Chapter 202B prevents CF from aligning various aspects of swine production, nutrition and management services, and swine processing in order to facilitate the development of consistent, high quality, and traceable products to meet the demands of consumers and retailers, both national and international.

14. Further, Iowa Code Chapter 202B potentially prevents CF from contracting with Iowa producers for the care and feeding of swine in the State of Iowa, thereby removing CF from competition with others in the business of contract swine production, to the detriment of CF, Iowa swine producers, and, ultimately, consumers of pork products in Iowa, across the nation

and around the world.

15. This is because CF is required to choose between owning/operating swine operations and owning/operating swine processing operations. CF is required to choose because members of the Christensen family are – individually – unable to attract and secure the financial and other resources necessary to do both.

16. CF desires to maintain its business operations in the State of Iowa, and to maintain the volume of pork processed at the Qualified Processor(s) in which the Christensen family owns an interest.

17. CF and the Christensen family wish to capitalize on the success of Triumph Foods and the benefits that Triumph has brought to the producing community, the processing community, the consumers, and to CF's many stakeholders – to include its many Iowa contract producers.

18. However, the ability of CF and the members of the Christensen family to maintain long term viability of CF swine operations and of Triumph Foods requires that CF be able to own all of the individual Christensen family members interests in Triumph.

19. The ability of CF and the members of the Christensen Family to aggressively pursue opportunities to build on the success of Triumph Foods – to include a potential second processing plant – likewise requires that CF have the ability to own the existing family members' interest in Triumph Foods.

20. Thomas J. Miller is the Attorney General of Iowa (the "Attorney General"). The Attorney General, as the chief legal officer of the State of Iowa, is charged with undertaking or supervising the enforcement of Iowa Code Chapter 202B on behalf of the State of Iowa.

JURISDICTION AND VENUE

21. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1331, and by 28 U.S.C. § 1343(3)-(4), in that this suit complains of the denial of federal constitutional rights.

22. Authority to order a reasonable award of attorney's fees and costs is conferred upon this Court by 42 U.S.C. §§ 1983 and 1988.

23. Declaratory relief is proper in this case of actual controversy under 28 U.S.C. § 2201(a).

24. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1)-(2) because the Attorney General resides in this judicial district and because a substantial part of the events giving rise to these claims occurred in this judicial district.

COUNT 1 Dormant Commerce Clause (Discrimination)

25. The allegations contained in Paragraphs 1 through 24 are incorporated by reference as if fully set forth herein.

26. Pursuant to Article I, Section 8, Clause 3 of the Constitution of the United States, "Congress shall have Power To regulate Commerce ... among the several states."

27. The dormant Commerce Clause prohibits a state from discriminating or treating in-state and out-of-state interests differently to the benefit of in-state interests and at the expense of out-of- state interests.

28. Unlawful discrimination may occur in one of three possible forms: (a) the text of a statute may facially discriminate against out-of-state interests; (b) a statute may have a discriminatory purpose; or (c) a statute may have a discriminatory effect. Iowa Code Chapter 202B is discriminatory in all three manners and must be struck down as unconstitutional.

Iowa Code Chapter 202B is Facially Discriminatory

29. Iowa Code Chapter 202B, on its face, exhibits a preference for in-state interests over out-of-state interests and is, therefore, facially discriminatory and unconstitutional.

30. Iowa Code Chapter 202B applies to "processors" producing beef or pork products that have a total annual wholesale value of eighty million dollars or more.

31. On information and belief, no "processor" regulated by Iowa Code Chapter 202B is an Iowa citizen or is headquartered in the State of Iowa.

32. Iowa Code Chapter 202B carves out an exemption for, and does not apply to, "qualified processors," which, as defined by the Chapter, refers to processors owned by swine producers who hold a limited "Threshold Interest" therein, a predominantly local interest.

33. Thus, Iowa Code Chapter 202B restricts, and unlawfully targets, only swine ownership and control by relatively large out-of-state businesses, including CF.

34. This facial preference in favor of local interests is unconstitutional and must be struck down

**Iowa Code Chapter 202B has a Discriminatory Purpose
and was Adopted with a Discriminatory Purpose**

35. Iowa Code Chapter 202E also has a discriminatory purpose and was adopted with a discriminatory purpose.

36. In determining whether or not a state adopted a statute with a discriminatory purpose, courts look to direct and indirect evidence, including: (a) statements by lawmakers; (b) the sequence of events leading up to the statute's adoption, including irregularities in procedure used to adopt the law; (c) the state's consistent pattern of disparately impacting members of a particular class of persons; (d) the statute's historical background, including any history of

discrimination by the state; and (e) the statute's use of highly ineffective means to promote the legitimate interest asserted by the state,

37. As was well documented and described in Smithfield Foods, Inc., Murphy Farms, LLC, and Prestage-Stoecker Farms, Inc. v. Miller, United States District Court for Southern District of Iowa, No. 4:02-CV-90324, the record related to Iowa Code Chapter 202B and its predecessor statutory sections reveals: (a) numerous statements by lawmakers revealing that the purpose of Chapter 202B was to prevent ownership and control within the swine industry by out-of-state businesses, including businesses such as CF, purportedly to protect independent Iowa producers; (b) that the sequence of events leading up to the adoption of Chapter 202B reflects its purpose of discriminating against out-of-state businesses, including CF; (c) that the State of Iowa has a long and consistent pattern of targeting such out-of-state businesses, to include meat processors, which necessarily includes CF, for discriminatory regulation; and (d) that even to the extent the State of Iowa has purported goals to be addressed by such regulations, Chapter 202B is a highly ineffective means to address those purported goals.

38. Iowa Code Chapter 202B clearly has a discriminatory purpose, was adopted with a discriminatory purpose, and based thereon is unconstitutional and must be struck down as unlawful.

Iowa Code Chapter 202B has a Discriminatory Effect

39. The effect of Iowa Code Chapter 202B is to discriminate against interstate commerce because the statute favors in-state economic interests over out-of-state business interests.

40. Iowa Code Chapter 202B prevents relatively large out-of-state businesses from conducting certain activities in Iowa. Stated more directly, the burdens and harms of the Chapter

are directly borne by out-of-state interests, including CF, while in-state businesses are free from such damaging regulation.

41. Chapter 202B in essence vests the benefits of production of swine only in certain in-state business including non-processors, qualified processors and independent swine producers.

42. The burden imposed upon out-of-state businesses, including CF, by the isolationism and protectionism created by Chapter 202B is significant and, unless addressed, forces valuable commerce to flow to other states or other nations.

43. This effect, Iowa's isolation from interstate and international commerce, is discriminatory against interstate commerce and out-of-state businesses, including CF, and is, therefore, unconstitutional and must be struck down.

WHEREFORE, CF respectfully requests that this Court:

A. Declare that Iowa Code Chapter 202B violates the dormant Commerce Clause of the Constitution of the United States;

B. Enjoin the enforcement of Iowa Code Chapter 202B against CF;

C. Award CF its attorney's fees and costs incurred in this action; and Grant such other relief as this Court deems necessary and appropriate.

COUNT II
Dormant Commerce Clause
(Unreasonable Burden on Interstate Commerce)

44. The allegations contained in Paragraphs 1 through 31 are incorporated by reference as if fully set forth herein.

45. Iowa Code Chapter 202B also violates the Commerce Clause of the Constitution of the United States because the burdens it imposes upon interstate commerce are clearly

excessive in relation to any putative local benefits.

46. Iowa Code Chapter 202B prevents CF, and other similarly situated out-of-state businesses, from aligning various aspects of swine production, nutrition and management services, and swine processing in order to facilitate the development of consistent, high quality, and traceable products to meet the demands of consumers and retailers, both national and international.

47. Iowa Code Chapter 202B also prevents CF, and other similarly situated out-of-state businesses, by requiring them to choose between swine operations and processing, from contracting with Iowa producers for the care and feeding of swine in the State of Iowa, removing CF and other processors from competition in the business of contract swine production, causing disadvantage and harm to CF, other processors, Iowa producers, and, ultimately, consumers of pork products.

48. Conversely, Iowa Code Chapter 202B provides no legitimate benefits to the State of Iowa, Iowa swine producers, or consumers of pork products.

Iowa Code Chapter 202B Harms Competition

49. The purported purpose of Iowa Code Chapter 202B is to protect competition in the swine market and address anti-competitive conduct by processors. In fact, the means utilized by the State of Iowa to effectuate its purported purpose is to prohibit, as opposed to regulate, certain activities by businesses, including CF.

50. In the face of its purported purpose, the record surrounding the adoption of Iowa Code Chapter 202B is devoid of any facts supporting a conclusion that meat processors are engaged in a pattern and practice of anti-competitive conduct directed toward Iowa producers.

51. Moreover, any alleged harm sought to be addressed by Iowa Code Chapter 202B is more than adequately addressed by other state and/or federal law regarding anti-competitive behavior undertaken by meat processors.

52. Iowa Code Chapter 202B, in fact, harms competition and fails to take into account the large and ever increasing number of Iowa producers who actively seek out contract feeding relationships instead of relying solely upon independent production and its significant financial risks.

53. By preventing CF and other similarly situated businesses from owning processing facilities while at the same time from owning, operating, financing or controlling swine operations within the State of Iowa and from contracting with Iowa producers for the care and feeding of swine, the State of Iowa has removed much needed competition to foster the growth of business by Iowa producers that seek out contract feeding relationships, all to the detriment of CF, other processors, Iowa swine producers, and, ultimately, consumers of pork products.

54. Iowa producers cannot be lawfully denied the opportunity to expand their swine operations by entering into competitive contract production relationships with CF and other out-of-state processors.

**Iowa Code Chapter 202B is Also Ineffective in Preserving the
Benefits of Production for Independent Iowa Producers**

55. As discussed above, and as discussed in Smithfield Foods, Inc., Murphy Farms, LLC, and Prestage-Stoecker Farms, Inc. v. Miller, United States District Court for the Southern District of Iowa No. 4:02-CV-90324, the record surrounding Chapter 202B reveals that the intended effect and purpose of the Chapter was to retain the financial benefits associated with the production phase of swine, and in particular the finishing phase of swine production, for one segment of independent Iowa producers that do not desire to enter into contract feeding

relationships.

56. This concealed goal, while discriminatory and unconstitutional as a result of its preference for local interests, is not accomplished in any event by Iowa Code Chapter 202B. The prohibitions of Chapter 202B are directed at only a few, relatively large, out-of-state processors only and do nothing to address or regulate non-processors or producer-owned processors that contract with Iowa producers for the care and feeding of swine. Chapter 202B has done nothing to preserve the benefits of production for independent Iowa producers; instead, it has served only to remove processors from competition for the business of those Iowa producers that seek contract feeding relationships.

57. The burden imposed upon interstate commerce and out-of-state processors, including CF, by the isolationism and protectionism created by Iowa Code Chapter 202B is significant and, unless addressed, forces valuable commerce to flow to other states or other nations. As a result, the impact of this unsupportable regulatory framework is to deny Iowa producers and the State of Iowa valuable and profitable business opportunities.

58. There can be no dispute that the burdens Iowa Code Chapter 202B imposes upon interstate commerce and out-of-state processors, including CF, and are clearly excessive in relation to its benefit, if any. As a result, Iowa Code Chapter 202B is unconstitutional and must be struck down.

WHEREFORE, CF respectfully requests that this Court:

- A. Declare that Iowa Code Chapter 202B violates the dormant Commerce Clause of the Constitution of the United States;
- B. Enjoin the enforcement of Iowa Code Chapter 202B against CF;

C. Award CF its attorney's fees and costs incurred in this action; and Grant such other relief as this Court deems necessary and appropriate.

GISLASON & HUNTER LLP, A Limited
Liability Partnership

By /s/ Gary W. Koch; /s/ Laura J. Ostrander

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CHRISTENSEN FARMS MIDWEST, LLC

CERTIFICATE OF SERVICE

I hereby certify that on March 29, 2011, I electronically filed the foregoing with the clerk of court of the U.S. District Court, Southern District of Iowa, using the CM/ECF system which will send notification to case participants registered for electronic notice. I further certify that I have served all case participants not registered for electronic notice by another manner authorized by Federal Rule of Civil Procedure 5(b)(2).

Signature: /s/ Janet Hall

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